

EXHIBIT 1

Ross Boughton

From: Tammy M. Mazzullo [tammy@qualls-workman.com]
Sent: Friday, March 28, 2008 10:21 AM
To: Ross Boughton
Cc: 'Daniel H. Qualls'
Subject: Goldsby v Adecco PMK Depositions

Ross,

I just wanted to follow up with you regarding the PMK depositions. The last week in April is fine. Let me know if April 29th will work for you.

Can you let advise how many witnesses there are so that we may determine if more than one day of examinations will be necessary.

Thank You.

Tammy

Tammy M. Mazzullo, Legal Assistant

Qualls & Workman, LLP
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EXHIBIT 2

Ross Boughton

From: Ross Boughton
Sent: Tuesday, April 01, 2008 1:33 PM
To: 'Tammy M Mazzullo'
Cc: 'Daniel H. Qualls', Charles Barker
Subject: RE: Goldsby v. Adecco PMK Depositions

Tammy and Dan,

There will be a single deponent for the PMK's. We are available on April 30, 2008. Does that work for your office?

-Ross

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EXHIBIT 3

Ross Boughton

From: Tammy M. Mazzullo [tammy@qualls-workman.com]
Sent: Tuesday, April 01, 2008 1:42 PM
To: Ross Boughton
Cc: 'Daniel H. Qualls'
Subject: RE: Goldsby v. Adecco PMK Depositions

Ross,

This email will confirm that we will depose Adecco's person most knowledgeable on April 30, 2008 at 10:00 a.m., in our offices on the three 30 b(6) deposition notices.

Tammy

Tammy M. Mazzullo, Legal Assistant

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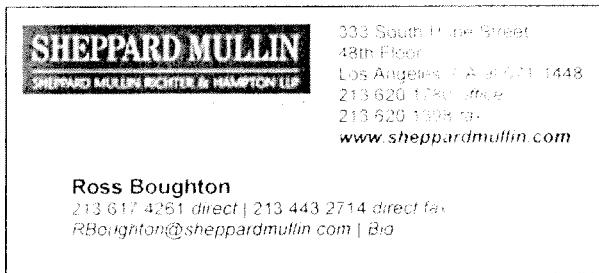
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EXHIBIT 3

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EXHIBIT 4

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, AND)
ALL OTHERS SIMILARLY)
SITUATED,)
Plaintiff,)
vs.) Case No. CV-07-5604 MMC
ADECCO, INC, and DOES 1)
through 100, inclusive,)
Defendants.)

DEPOSITION OF KIM HANS

June 4, 2008

EXHIBIT 4
-10-

CHERREE P. GAGE, CSR # 11108, RPR, CRR
❶ 263579



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(702) 366-0500 Las Vegas	(915) 922-5777 Sacramento	(408) 885-0550 San Jose	(760) 322-2240 Palm Springs
	(858) 455-5444 San Diego	(951) 686-0606 Riverside	(818) 702-0202 Woodland Hills

1 Q. When Adecco employees fill out time cards, do
2 they do so online?

3 A. They can do so online.

4 Q. Is there any other way they can fill out time
5 cards?

6 A. We also have a telephone system that they can
7 input their time through.

8 Q. Any other way?

9 A. They can turn in a time card to our office,
10 they can use a punch clock or electronic timekeeping
11 system at the customer site.

12 Q. Any other way?

13 A. I can't think of anything.

14 Q. What percentage of time cards are filled out
15 online?

16 A. I don't know the exact answer to that.

17 Q. Can you give me an estimation?

18 A. I would not be able to give you an estimation.
19 We would have to do some research to find out.

20 Q. Are most time cards filled out online?

21 A. I wouldn't say most, no. It really varies.

22 Q. How long are time cards filled out online
23 kept?

24 A. I don't know the exact answer to that, but we
25 can find out for you.

EXHIBIT 4
-11-

1 individual employees?

2 A. Yes.

3 Q. If you wanted to know if an employee received
4 a meal period, are you able to retrieve data in the
5 system to answer the question of whether the employee
6 did receive a meal period?

7 MR. BARKER: Objection. Vague. What do you
8 mean by "system"?

9 MR. QUALLS: Fair enough. I listen to
10 objections. If they're vague I rephrase my questions.

11 Q. What system is used to input time cards? Does
12 it have a name?

13 A. The time capture tool. It's called our
14 individual web time card.

15 Q. Are you able to go onto the individual web
16 time card and retrieve time card information to
17 determine if an individual employee received a meal
18 period?

19 A. It doesn't specifically identify the meal
20 period. It identifies the total hours.

21 Q. Is there any data, to your knowledge, on the
22 individual web time card that enables one to determine
23 if an employee received a meal period?

24 A. Not on the individual web time card.

25 Q. Is there any system that enables one to

EXHIBIT 4
-12-

1 determine for employees who fill out time cards using
2 Exhibit 3 whether an employee received a meal period?

3 A. No.

4 Q. So if you wanted to know if an individual
5 employee received a meal period for a given week worked
6 or a given day worked, there's no system that you're
7 aware of that would enable you to retrieve data to
8 determine whether the employee received a meal period?

9 A. No.

10 MR. QUALLS: Could you read back my question,
11 please.

12 (Whereupon the record was read as requested.)

13 Q. BY MR. QUALLS: To your knowledge has any such
14 system existed at Adecco since -- for the period from
15 July 2003 to the present?

16 A. No. There's no system.

17 Q. Is there any means to your knowledge by which
18 you are able to retrieve employee data to determine if
19 an employee received a meal period?

20 A. We could view the time card.

21 Q. Let's stop right there. How do you go about
22 viewing a time card? And again, I'm asking questions
23 regarding employees who use Exhibit 3. All right?

24 A. Right. The time cards that are turned in to
25 our office, we can access those. We can ask an

EXHIBIT 4
-13-

1 associate to see their time card. And customers in some
2 cases have copies of the time cards and we can ask them
3 to see the time card.

4 MR. QUALLS: Could you read back that response
5 for me, please.

6 (Whereupon the record was read as requested.)

7 Q. BY MR. QUALLS: Do employees who use Exhibit 3
8 for their time cards also submit hard copy time cards?

9 A. Sometimes.

10 Q. And some employees don't do so; is that
11 correct?

12 A. Right.

13 Q. For employees who submit Exhibit 3 as their
14 time card electronically, are those employees also
15 required to submit a hard copy time card?

16 A. They're not required to.

17 Q. For employees who submit Exhibit 3
18 electronically, are customers also required to maintain
19 a time card for that employee?

20 A. We'd like them to. They're not required to.

21 Q. Have you ever tried to retrieve meal period
22 information for an employee who has submitted a time
23 card such as Exhibit 3?

24 A. I have not.

25 Q. Have you ever directed anyone to do so?

EXHIBIT 4
-14-

1 A. No.

2 Q. To your knowledge has anyone ever tried to do
3 so?

4 A. I don't know.

5 Q. Do you know if after the information set forth
6 on Exhibit 3 is entered electronically by an employee
7 whether or not Adecco retains meal period information
8 electronically?

9 A. Ask me again.

10 Q. Sure.

11 A. I think we covered this question, but I might
12 be wrong. That's why I'm confused.

13 Q. All right. Maybe we did. But I'm trying to
14 make sure I did.

15 A. Okay.

16 MR. QUALLS: Could you read back the question,
17 please.

18 (Whereupon the record was read as requested.)

19 THE WITNESS: No.

20 Q. BY MR. QUALLS: Once the meal period
21 information is entered electronically, is it then
22 deleted?

23 MR. BARKER: The question is vague and
24 ambiguous. Assumes facts that are incorrect.

25 Q. BY MR. QUALLS: You can answer.

EXHIBIT 4
-15-

1 A. I would say no.

2 Q. All right. Perhaps I'm confused. Let me ask
3 you this question. Let's turn our attention to Exhibit
4 3, again. All right?

5 A. Yes.

6 Q. This is a hard copy of what you would see if
7 you -- if an employee enters their time electronically.

8 A. Yes.

9 Q. A screen?

10 MR. BARKER: What is? I'm sorry?

11 MR. QUALLS: Exhibit 3.

12 MR. BARKER: You're saying does the screen
13 show all of this same --

14 MR. QUALLS: Yes.

15 MR. BARKER: Exactly the same as Exhibit 3?

16 MR. QUALLS: Yes.

17 THE WITNESS: No.

18 Q. BY MR. QUALLS: All right. The screen entry
19 format is different; is that right?

20 A. Yes.

21 Q. All right. The format for entry of time card
22 information electronically provides for entry of
23 information regarding meal periods; is that correct?

24 A. Ask me again.

25 Q. The format for entry of data electronically,

EXHIBIT 4

-16-

1 time card data electronically, provides for entry of
2 meal period data, correct?

3 A. The format for the electronic time card asks
4 for total hours. So your meal period would be captured
5 in your total hours, but it doesn't outline the meal
6 period.

7 Q. How would the meal period data be captured?

8 A. On the paper time card.

9 Q. Only on the paper time card; is that correct?

10 A. That's right.

11 Q. So if you were an employee and you are
12 entering your time card electronically, you are not
13 entering information regarding meal periods; is that
14 correct?

15 A. You are entering it as it's captured in our
16 total hours, but it's not broken down by meal period.

17 Q. All right. How is it captured in our total
18 hours?

19 A. Because you'll use this time card and you'll
20 put the -- what time you start, the time you log out for
21 lunch, what time you clock back in from your meal break,
22 the time you stop and your total. The time capture
23 system asks for your daily totals.

24 Q. So if you're using the time capture system to
25 enter your time card information --

EXHIBIT 4
-17-

1 A. Yes.

2 Q. -- you enter the time your shift begins; is
3 that correct?

4 A. No. You enter your daily total.

5 Q. All right. You enter a daily total of hours
6 worked; is that right?

7 A. Correct.

8 Q. So you would enter, for example, eight hours?

9 A. Exactly.

10 Q. All right. What other data do you enter other
11 than your total hours worked?

12 A. Your assignment number and your -- I think
13 it's the last four digits of your Social Security
14 number.

15 Q. Anything else?

16 A. I don't believe so.

17 Q. Is any data entered regarding meal periods
18 taken?

19 A. Only as part of the summary of the total hours
20 that you're indicating on a daily basis.

21 Q. Does the summary depict the fact that a meal
22 period was taken or not?

23 A. Well, it's assumed that a meal period is
24 taken.

25 Q. My question is more specific than that. Does

EXHIBIT 4
-18-

1 Q. What percentage of employees use ATS to submit
2 a time sheet?

3 A. I don't know.

4 Q. Are you able to estimate the percentage?

5 A. I'm not. It really would depend.

6 Q. Do most employees use ATS?

7 A. No.

8 Q. How long has the ATS system been used by
9 Adecco?

10 A. I don't know.

11 Q. What is your best estimate of when Adecco
12 began using the ATS system?

13 A. About four, five years ago. I don't know.

14 Someone would have to verify that.

15 Q. Are there any written instructions provided
16 employees on the subject of how to use the ATS system?

17 A. No. I believe it's self-explanatory. It
18 walks them through. It's an automated system.

19 Q. Does the ATS system capture meal period
20 information?

21 A. I don't believe so.

22 Q. What information does the ATS system capture?

23 A. I believe it's the same as the web time where
24 it captures daily hours.

25 Q. Are employees who use the ATS system required

EXHIBIT 4
-19-

1 to also prepare a hard copy of their time?

2 A. Ideally we'd like them to do that.

3 Q. My question is are they required to do so?

4 A. In some cases we ask them to. As far as
5 required, there are no consequences if they don't.

6 Q. Are they told they must?

7 A. Yes.

8 Q. So all employees that use the ATS system are
9 told they also must keep a hard copy of a time card?

10 A. Yes.

11 Q. So employees who use the ATS system both use
12 the ATS system and fill out a paper time card; is that
13 right?

14 A. They're supposed to.

15 Q. Is there any monitoring system in place to
16 determine which employees who use the ATS system do not
17 fill out a paper time card?

18 A. Not that I'm aware of.

19 Q. Is there any enforcement of the requirement
20 that employees who use the ATS system also fill out a
21 paper time card?

22 A. Not as a general practice.

23 Q. To your knowledge does Adecco have any way of
24 knowing which employees -- withdraw the question.

25 Are clients required to keep a record of meal

EXHIBIT 4
-20-

1 periods for employees who use the ATS system?

2 A. Our clients, we also ask our clients to sign
3 the time card and to keep a copy of the time card.

4 Q. My question is more specific than that. Are
5 clients --

6 A. Our clients are not aware of whether our
7 associates are using the ATS system or using the web
8 time. So I guess the answer would be no.

9 Q. All right.

10 A. Because that's out of their scope how the time
11 is being submitted from the associate.

12 Q. Does the ATS system record when a daily work
13 shift begins?

14 A. No. We discussed that. Just the hours.

15 Q. Does the ATS system capture the same
16 information that's captured using the online system?

17 A. I believe so.

18 Q. Does it capture any other information?

19 A. Not that I'm aware.

20 Q. So the systems for purposes of capturing data
21 duplicate each other, correct?

22 A. Right. Two different methods.

23 Q. Are reports prepared regarding data entered on
24 the ATS system?

25 MR. BARKER: The question is vague and

EXHIBIT 4
-21-

1 ambiguous.

2 Q. BY MR. QUALLS: You can answer.

3 A. We receive -- we can access records that show
4 the total time that's input by our associates.

5 Q. What are those reports called?

6 A. Payroll register.

7 Q. Does the payroll register indicate that the
8 information was submitted through the ATS system?

9 A. I don't think so.

10 Q. Is there any summary that you're aware of of
11 data submitted through the ATS system?

12 A. I'm not aware of.

13 Q. If you wanted to know what information was
14 submitted by an individual employee through the ATS
15 system specifically, would there be a way for you to
16 determine that?

17 A. I don't know.

18 Q. Are employees who use the ATS system told in
19 writing that they are required to also keep a hard copy
20 time card? Withdraw the question. Restate it.

21 Are employees who use the ATS system told in
22 writing that they are also to submit a hard copy time
23 card?

24 A. They're not -- they're asked to submit a hard
25 copy to the client. It does not indicate that they must

EXHIBIT 4
-22-

1 submit a hard copy to Adecco.

2 Q. The hard copy time card goes to the client,
3 not Adecco; is that correct?

4 A. We ask them to submit a copy of the time card
5 to Adecco. We also ask them to submit a hard copy to
6 the client. It's in writing that they need to give a
7 copy to the customer.

8 Q. They have nothing in writing telling them that
9 they have to give a copy also to Adecco; is that
10 correct?

11 A. I don't believe so. Can I see the time card?

12 Q. Sure.

13 A. Customer copy, associate copy, customer copy.
14 No. There's nothing that says Adecco copy.

15 Q. Are associates told that the associate copy on
16 Exhibit 3 is to be given by the associate to Adecco?

17 A. No. We don't require they give us their copy.
18 We require a copy of the time card, so they could fax us
19 a copy of it, they can drop off their copy, they can
20 make a copy.

21 Q. If one asks for it; is that correct?

22 A. Right.

23 Q. Unless someone asks for it, there's no
24 requirement that they submit their copy to Adecco on a
25 weekly basis?

EXHIBIT 4
-23-

1 A. We ask them to submit their copy to Adecco on
2 a weekly basis.

3 Q. Okay. And so the record is clear, that is
4 asked of employees who use the ATS system; is that
5 correct?

6 A. It's asked of employees who use a paper time
7 card.

8 Q. Okay. Let's go back. Forgive me if I haven't
9 made this clear.

10 A. Okay.

11 Q. I've been asking a series of questions
12 regarding the ATS system and I've tried my best to make
13 that clear in my questioning. For purposes of employees
14 who use the ATS system, are those employees told that
15 they are required to submit a paper time card in
16 addition to using the ATS system?

17 A. Yes.

18 Q. Are they told that in writing?

19 A. No.

20 Q. Who tells the employees that they are to
21 submit a paper time card if they use the ATS system?

22 A. The recruiters that hire the employees.

23 Q. Anyone else?

24 A. Whoever is hiring the employee. It could be
25 the branch manager, it could be the recruiter.

EXHIBIT 4
-24-

1 their payroll check?

2 A. It should be.

3 MR. QUALLS: Can you read back the last answer
4 please, or the one before the last answer.

5 (Whereupon the record was read as requested.)

6 Q. BY MR. QUALLS: What is a time capture tool?

A. A time clock. There's a couple different methods available. There's time clock, there's systems where you can input your time into a third party tool, there's electronic time clocks or manual time clocks.

11 Q. Are the time capture tools tools of the
12 client?

13 A. The time clocks are either provided by Adecco
14 or they could be the clients'. There's a combination.

Q. What percentage of employees use time clocks?

16 A: I wouldn't be able to answer that.

17 Q. Are you able to estimate?

18 A. I don't know, honestly. It depends. It
19 really varies branch to branch and market to market.

20 Q. Would it be more than half at any given time?

21 A. It could be.

22 Q. Do you know?

23 A. I don't. It depends on the -- you know, when.
24 And some years we might have more customers that have
25 clocks that utilize clocks and some years less.

EXHIBIT 4
-25-

1 Q. Under what circumstances does Adecco provide a
2 time clock?

3 A. As a service to the customer, it makes sense
4 based on their usage.

5 Q. And what are the circumstances that make sense
6 to use a time card -- time clock?

7 A. If there's quite a bit of volume where it's a
8 burden for supervisors to have to sign each individual
9 time card.

10 Q. Any other circumstance?

11 A. You know, honestly, it could just depend.
12 Sometimes it makes sense to use a time clock, but the
13 customer's facilities can't accommodate a time clock.

14 Q. When the time clock is used is a hard copy
15 time card used to record time?

16 A. Not usually, but it could be.

17 Q. How is time captured on a time clock provided
18 by Adecco?

19 A. Provided?

20 MR. BARKER: Say that again. I'm sorry.

21 MR. QUALLS: Withdraw the question. Restate
22 it.

23 Q. You indicated earlier in some circumstances
24 Adecco provides the time clock?

25 A. We can install our own time clock. We can go

EXHIBIT 4
-26-

1 into the marketplace and purchase a time clock, time
2 capture system, and install it in the customer's site or
3 we can have our associates utilize their time capture
4 system.

5 Q. For now I'm going to ask questions regarding
6 time clocks provided by Adecco.

7 A. Okay.

8 Q. What kind of time clocks are provided by
9 Adecco?

10 A. You mean the brands?

11 Q. Yes.

12 A. I believe the one that we often use is
13 Signify, but there's a variety of them. I couldn't name
14 them all.

15 Q. Do the time clocks provided by Adecco use hard
16 copy punch cards?

17 A. Some do.

18 Q. Is there some other way the time clocks
19 provided by Adecco record time other than punching on a
20 hard copy?

21 A. They could have a swipe card.

22 Q. Any other way?

23 A. Thumbprint.

24 Q. Thumbprint?

25 A. Uh-huh.

EXHIBIT 4
-27-

1 Q. Any other way?

2 A. I can't think of anything.

3 Q. When a hard copy time card is used, how are
4 those time cards submitted by the employees to Adecco?

5 A. You're referring to the punch clock time?

6 Q. Yes.

7 A. Through a variety of ways. Adecco could come
8 by the client's site and take copies of the time cards.
9 The customer could fax them to our office.

10 Q. At some point those time cards arrive at
11 Adecco data input center; is that correct?

12 A. Right. Or the branch, they data input
13 themselves.

14 Q. Do the punch cards contain meal period data?

15 A. It would show the times they clocked in and
16 clocked out, so yes.

17 Q. Does the punch card data -- withdraw the
18 question.

19 Is the punch card data inputted into any
20 system once it is -- once it has arrived at an Adecco
21 branch?

22 A. We would input through the time.adecco.com.

23 Q. Same system you described earlier?

24 A. Yes.

25 Q. Does that inputting of data include input of

EXHIBIT 4
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EXHIBIT 5

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

18 SHAVOTNAE GOLDSBY, AND ALL OTHERS) No. CV 07 5604 MMC
19 SIMILARLY SITUATED,)
20 Plaintiff,) **PLAINTIFF'S NOTICE OF MOTION**
21 vs.) **AND MOTION TO COMPEL**
22 ADECCO, INC, and DOES 1 through 100, inclusive,) **FURTHER RESPONSES TO**
23 Defendants.) **PLAINTIFF'S FIRST SET OF**
24) **SPECIAL INTERROGATORIES;**
25) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF**
)
) **DATE:** August 15, 2008
) **TIME:** 9:00 am
) **CTRM:** 7
) **JUDGE:** Hon. Maxine M. Chesney

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1 **NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO**
2 **PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES**
3

4 TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

5 PLEASE TAKE NOTICE that on August 15, 2008 at 9:00 a.m. or as soon thereafter as the
6 matter can be heard in Courtroom 7 of the above-entitled court, located at 450 Golden Gate
7 Avenue, San Francisco, California, Plaintiff Shavotnae Goldsby (Plaintiff) will move the above-
8 entitled court for an order compelling Defendant Adecco, Inc., (ADECCO) to provide further
9 responses to Plaintiff's First Set of Special Interrogatories and overrule objections interposed to
10 said discovery requests as set forth in Defendants' discovery responses. Good cause exists for the
11 order required, as information sought is within the scope of permitted discovery. Any objections
12 raised by Defendant are without merit.

13 This motion will be based on the Memorandum of Points and Authorities filed herewith,
14 the Declaration of Daniel H. Qualls filed herewith, the complete files and records in this action,
15 and such other argument and documents as may be presented at the hearing on this Motion.
16

17 Dated: July 3, 2008

QUALLS & WORKMAN, L.L.P.

19 By: /S/
20 Daniel H. Qualls
21 Attorneys for Plaintiff and all others similarly
22 situated
23
24
25
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

I. STATEMENT OF ISSUES TO BE DECIDED

Pursuant to Fed. R. Civ. P. 37(a)(1), Plaintiff brings this motion to compel for Defendant ADECCO's failure to provide full and complete responses to Plaintiff's First Set of Special Interrogatories. Defendant objected to Plaintiff's interrogatories on the grounds of relevance, that Defendant cannot be forced to disclose the requested information prior to this Court's determination on class certification, that the requested information violates the right to privacy, and that disclosure is too burdensome.

II. STATEMENT OF FACTS

10 Plaintiff is a former hourly employee of Defendant. While employed by ADECCO,
11 Plaintiff contends she periodically failed to receive meal period breaks as required by California
12 law. Plaintiff contends ADECCO maintains employee records depicting when hourly employees
13 did not receive meal period breaks. Plaintiff contends ADECCO did not pay Goldsby an
14 additional hour of compensation for missed meal period breaks. Plaintiff's employment with
15 ADECCO terminated on December 26, 2006. Plaintiff filed a Class Action Complaint in
16 California state court for violations on July 26, 2007.¹ Plaintiff's Complaint defines the class of
17 employees she seeks to represent as: persons paid on an hourly basis for whom ADECCO records
18 depict a meal period not taken who did not receive compensation payment by ADECCO for lack
19 of said meal period.² Plaintiff served the Complaint on ADECCO on August 17, 2007.³

A. Plaintiff's Propounded Interrogatories and Defendant's Responses

21 On September 4, 2007, Plaintiff served her first sets of special interrogatories on
22 ADECCO.⁴ ADECCO served its responses on November 1, 2007.⁵ The Special Interrogatories
23 propounded by Plaintiff with Defendant's responses are set forth as follows:

¹ Declaration of Daniel H. Qualls In Support Of Plaintiff Shavotnae Goldsby's Motion To Compel Further Responses to Plaintiff's First Set of Special Interrogatories ("Qualls Decl.") ¶ 2, EX A.

² Id. at ¶ 10.

³ Id., Proof of Service of Summons.

⁴ Qualls Decl. ¶ 13 EX B

⁵ Qualls Decl., ¶ 3, EX. B.

1 **SPECIAL INTERROGATORY NO. 1**

2 Identify the name, address, e-mail address AND telephone number of all persons employed
3 by YOU in California [between] July 26, 2003 and the present paid on an hourly basis for whom
4 ADECCO records depict a meal period not taken. (The terms "YOU," "YOUR" or "YOURS"
5 refer to ADECCO and, if applicable, the agents, employees, officers, and directors of same or of
6 any subsidiary or divisions thereof, and their attorneys and those persons employed by their
7 attorneys.) (As used herein, the term "ALL" is synonymous with "ANY" and the term "OR"
8 means "AND/OR.")

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 1**

10 Defendant objects to this interrogatory on the grounds that it seeks information which is
11 not relevant to the subject matter involved in the pending action, and which is not reasonably
12 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
13 oppressive; that it calls for information that is protected by the right of privacy; that it is
14 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
15 phrase "depict a meal period not taken;" and that it is premature in that it seeks information
16 concerning potential class members prior to class certification.

17 Defendant further objects to this interrogatory on the grounds that it improperly seeks
18 information pertaining to liability and damages. This case is presently in the pre-certification
19 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
20 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
21 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
22 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
23 action before it has been determined by the Court that it is appropriate to proceed by way of a
24 collective action.

25 **SPECIAL INTERROGATORY NO. 2**

26 Identify the period of employment for each person identified in response to Special
27 Interrogatory No. 1.

28

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 2**

2 Defendant objects to this interrogatory on the grounds that it seeks information which is
3 not relevant to the subject matter involved in the pending action, and which is not reasonably
4 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
5 oppressive; that it calls for information that is protected by the right of privacy; that it is
6 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
7 phrase "period of employment;" and that it is premature in that it seeks information concerning
8 potential class members prior to class certification.

9 Defendant further objects to this interrogatory on the grounds that it improperly seeks
10 information pertaining to liability and damages. This case is presently in the pre-certification
11 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
12 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
13 and damages issues if the proposed [sic] classes are certified. However, if Defendant is subjected
14 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
15 action before it has been determined by the Court that it is appropriate to proceed by way of a
16 collective action.

17 **SPECIAL INTERROGATORY NO. 3**

18 Identify the number of persons employed by YOU in California between July 26, 2003
19 AND the present paid on an hourly basis for whom ADECCO records depict a meal period not
20 taken.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 3**

22 Defendant objects to this interrogatory on the grounds that it seeks information which is
23 not relevant to the subject matter involved in the pending action, and which is not reasonably
24 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
25 oppressive; that it calls for information that is protected by the right of privacy; that it is
26 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
27 phrase "period of employment;" and that it is premature in that it seeks information concerning
28 potential class members prior to class certification.

1 Defendant further objects to this interrogatory on the grounds that it improperly seeks
2 information pertaining to liability and damages. This case is presently in the pre-certification
3 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
4 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
5 and damages issues if the proposed [sic] classes are certified. However, if Defendant is subjected
6 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
7 action before it has been determined by the Court that it is appropriate to proceed by way of a
8 collective action.

9 Subject to and without waiving these objections, Defendant responds as follows: During a
10 typical month, Adecco has approximately 10,000 employees that are assigned to work for
11 Adecco's clients in California.

12 **SPECIAL INTERROGATORY NO. 4**

13 Identify ALL persons employed by YOU in California paid on an hourly basis between
14 July 26, 2003, AND the present who complained to YOU REGARDING the absence of meal
15 period breaks. (As used herein, the term "REGARDING" means relating to, referring to,
16 pertaining to, reflecting, substantiating, evidencing, constituting, or in any manner whatsoever
17 logically or factually connected with the matter referenced, whether in whole or in part.)

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 4**

19 Defendant objects to this interrogatory on the grounds that it seeks information which is
20 not relevant to the subject matter involved in the pending action, and which is not reasonably
21 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
22 oppressive; that it calls for information that is protected by the right of privacy; that it is
23 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
24 term "complained" and the phrase "absence of meal breaks;" and that it is premature in that it
25 seeks information concerning potential class members prior to class certification.

26 Defendant further objects to this interrogatory on the grounds that it improperly seeks
27 information pertaining to liability and damages. This case is presently in the pre-certification
28 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,

1 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
2 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
3 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
4 action before it has been determined by the Court that it is appropriate to proceed by way of a
5 collective action.

6 **SPECIAL INTERROGATORY NO. 5**

7 Identify the number of persons employed by YOU in California between July 26, 2003 and
8 the present, paid on an hourly basis.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 5**

10 Defendant objects to this interrogatory on the grounds that it seeks information which is
11 not relevant to the subject matter involved in the pending action, and which is not reasonably
12 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
13 oppressive; that it calls for information that is protected by the right of privacy; that it is
14 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
15 phrase "employed by YOU;" and that it is premature in that it seeks information concerning
16 potential class members prior to class certification.

17 Defendant further objects to this interrogatory on the grounds that it improperly seeks
18 information pertaining to liability and damages. This case is presently in the pre-certification
19 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
20 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
21 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
22 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
23 action before it has been determined by the Court that it is appropriate to proceed by way of a
24 collective action.

25 Subject to and without waiving these objections, Defendant responds as follows: During a
26 typical month, Adecco has approximately 10,000 employees that are assigned to work for
27 Adecco's clients in California.

28

1 **B. Plaintiff's Attempts to Depose ADECCO and Continue Discovery**

2 On September 10, 2007, Plaintiff served notices seeking to take the depositions of
 3 ADECCO's Persons Most Knowledgeable regarding 1) ADECCO policy and procedures
 4 regarding issuance of final payroll checks to terminated California employees; 2) ADECCO
 5 California meal period break policies; and 3) ADECCO meal period break record keeping
 6 practices and procedures.⁶ Plaintiff noticed the depositions to proceed on September 25, 2007.⁷
 7 ADECCO did not produce its Persons Most Knowledgeable on the noticed topics prior to serving
 8 Plaintiff with its interrogatory responses.

9 On November 5, 2007, four days after serving its responses, ADECCO removed this case
 10 to federal court.⁸ Consequently, the procedural maneuvering placed Plaintiff's ability to
 11 commence discovery on hold until the parties held a Fed. R. Civ. P. 26 Initial Disclosure
 12 Conference on February 1, 2008.⁹ Although Plaintiff just received the interrogatory responses
 13 detailed above at the time of removal, Plaintiff had not yet taken the deposition of ADECCO's
 14 representative on the noticed topics, and thus had no knowledge of ADECCO's meal period
 15 recordkeeping practices. Removal to federal court coupled with the failure of ADECCO to
 16 produce its representative in a timely manner meant that Plaintiff did not have an opportunity at
 17 the time Plaintiff received ADECCO's responses to file a motion to compel, given the dictates of
 18 Rule 26.

19 Following the Rule 26 Conference, on February 5, 2008, Plaintiff served Fed. R. Civ. P.
 20 30(b)(6) deposition notices seeking the same knowledgeable persons from ADECCO as
 21 previously noticed on September 10, 2007, in the state court action.¹⁰ This Court entered its
 22 Pretrial Scheduling Order on February 15, 2008, setting November 21, 2008, as the non-expert
 23 discovery cutoff date.¹¹ Plaintiff initially noticed the depositions for September 25, 2007, re-
 24 noticed them for March 5, 2008, and then continued them again to occur on May 22, 2008 per

25
 26 ⁶ Qualls Decl., ¶ 5, EX. D.

27 ⁷ *Id.*

28 ⁸ Qualls Decl., ¶ 6, EX E.

⁹ *Id.*

¹⁰ Qualls Decl., ¶ 7, EX. F.

¹¹ Qualls Decl., ¶ 8, EX. G.

1 ADECCO's request. On February 29, 2008, ADECCO'S counsel first indicated that the March
 2 5th date was unacceptable.¹² The parties agreed to reschedule the deposition date for April 30,
 3 2008, and then rescheduled again to May 22, 2008.¹³ As the May 22 date approached, ADECCO
 4 again sought to reschedule the depositions for the fourth time.¹⁴ On June 4, 2008, Plaintiff's
 5 counsel took the deposition of ADECCO's representative, Kim Hans, Vice President of
 6 Operations, Southwest Division on the noticed topics. At this deposition, Plaintiff learned the
 7 nature of Defendant's recordkeeping practices for the first time: the various methods by which
 8 ADECCO hourly employees record their meal periods and the existence of ADECCO's records
 9 thereof.¹⁵

10 Plaintiff learned that most of ADECCO's time records are electronic and thus easily
 11 searchable. This is the type of information sought by and is responsive to interrogatories seeking
 12 putative class member contact information. ADECCO maintains both a website, time.adecco.com
 13 (TAC), and a telephone system called ATS wherein its employees enter their daily hours
 14 worked.¹⁶ Neither the TAC site nor the ATS system provide any information regarding whether
 15 an employee took a meal break period, as the data for both time entry methods reflects only the
 16 total number of hours an employee worked.¹⁷ ADECCO employees who use paper time cards to
 17 record their time typically submit their time cards to ADECCO, and then a designated employee
 18 inputs the time card data into the TAC site.¹⁸ The website is the same one used by employees who
 19 input time themselves, and does not reflect meal period break data.¹⁹ Another group of ADECCO
 20 employees use hard copy punch cards and a time clock at the worksite to record their time.²⁰
 21 ADECCO collects this information and inputs it into the TAC site, again without capturing any
 22 data regarding meal period breaks.²¹ At other work sites where the employees use the client's own
 23

24 ¹² Qualls Decl., ¶ 9, EX H.

25 ¹³ Id.

26 ¹⁴ Id.

27 ¹⁵ Qualls Decl. ¶ 10, EX. I, June 4, 2008, Deposition of Kim Hans ("Hans Depo.") at 13:1-21, 17:11-18:3, 18:17-
 19:21, 21:25-23:7, 23:17-25:3, 26:22-27:24, 27:25-28:7, 33:9-12, 34:19-21, 36:6-9, 43:3-44:18, 47:3-14.

28 ¹⁶ Hans Depo., at 12:10-16, 13:4-7, Qualls Decl. EX I.

¹⁷ Hans Depo., at 14:10-21, 17:11-24, 26:22-27:24, 29:15-22, Qualls Decl. EX I.

¹⁸ Hans Depo., 33:20-34:23, Qualls Decl. EX I.

¹⁹ Hans Depo., 36:6-9, 45:2-9, Qualls Decl. EX I.

²⁰ Hans Depo., 40:6-21, Qualls Decl. EX I.

²¹ Hans Depo., 43:19-44:4, Qualls Decl. EX I.

time clock, some clients print out time clock data for ADECCO's input at the TAC site.²² In short, ADECCO's record keeping practices ensure that the majority of employee time record data it collects is maintained on two electronic systems. Neither system's records depict whether an employee took a timely meal period break.

C. Plaintiff's Unsuccessful Meet and Confer Attempts

As required by Fed. R. Civ. P. 37(a)(1) and L.R. 37-1(a), Plaintiff's counsel met and conferred with Defendant's counsel via telephone on June 20 and 24, 2008, to attempt to resolve the parties' differences regarding production of the putative class members' contact information and the related information Plaintiff requested via interrogatories. These attempts were unsuccessful.²³ Accordingly, Plaintiff now brings this motion to compel ADECCO's further responses to the interrogatories.

III. ARGUMENT

A. Plaintiff's Interrogatories Are Within Scope Of Permitted Discovery

14 ADECCO first objects to Plaintiff's interrogatories on the basis that the information sought
15 is both irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
16 Parties in a civil action may obtain discovery of any non-privileged information that is "relevant to
17 the subject matter involved in the pending action . . ." or is "reasonably calculated to lead to the
18 discovery of admissible evidence" at trial. Fed. R. Civ. P. 26 (b) (1) (Rule 26). Courts broadly
19 construe the scope of discovery. Oppenheimer Fund v. Sanders, 437 U.S. 340 (1978). A court
20 should consider a request for discovery relevant if there is any possibility that the information
21 sought may be relevant to the claim or defense of any party. Hammond v. Lowe's Home Ctrs., Inc., 216 F.R.D. 666, 670 (D. Kan. 2003). A court therefore should allow a request for discovery
22 unless it is clear that the information sought can have no possible bearing on the claim or defense
23 of a party. Id.

25 Plaintiff's Complaint alleges claims under the California Labor Code for Defendant's
26 failure to provide meal period breaks and compensation for missed meal period breaks on behalf

²² Hans Depo., 48:3-18, Qualls Decl. EX H.

²³ Qualls Decl. ¶ 11.

1 of herself and similarly situated ADECCO employees. To proceed, Plaintiff must make a
 2 threshold showing that her claims give rise to predominant issues common to the class she seeks
 3 to represent. Plaintiff's request for the names and addresses of ADECCO employees is within the
 4 scope of permitted discovery because the information sought will enable Plaintiff to ascertain and
 5 establish that Plaintiff and such employees are similarly situated. The scope of Rule 26 is not
 6 limited by the Rule 23 proceeding. This objection is without merit.

7 **B. The Supreme Court Recognizes The Right to Pre-Certification Discovery of**
 8 **Putative Class Member Contact Information**

9 ADECCO further objected on the ground that Plaintiff improperly seeks information
 10 regarding liability and damages prior to class certification. Class certification is not a preliminary
 11 requirement to the release of putative class members' contact information. In Hoffmann-La Roche
 12 Inc. v. Sperling, 493 U.S. 165 (1989), the Supreme Court upheld a discovery order requiring the
 13 defendant to provide the names and addresses of potential parties prior to authorization to proceed
 14 as a representative action or class certification. Id. at 170. "[T]he Supreme Court did not require a
 15 class certification prior to production of the list. It first ruled that production of the list of co-
 16 workers was proper." Bailey v. Ameriquest Mortg. Co., 2002 U.S. Dist. LEXIS 1363 (D. Minn.
 17 2002) ("The District Court was correct to permit discovery of the names and addresses of the
 18 discharged employees."). As explained "[i]n general, at the precertification stage, discovery in a
 19 putative class action is limited to certification issues (citation omitted) . . . However, the
 20 merits/certification distinction is not always clear. Facts relevant to the class action determination
 21 and definition may largely be the same as those relevant to the merits of the case." (Citation
 22 omitted). Accordingly, "[a] District Court should be chary of restricting communications with
 23 class members, and should do so only upon a 'clear record and specific findings that reflect a
 24 weighing of the need for a limitation and the potential interference with the rights of the parties.'"
 25 (citation omitted). Barnes v. Julien J. Studley, Inc., 1989 U.S. Dist. LEXIS 18349, 5-6 (D. D.C.
 26 1989).

27 Courts likewise affirm the right to pre-class certification discovery of potential class
 28 member names and addresses in cases proceeding under Rule 23. Whitworth v. Chiles Offshore

1 Corp., 1992 U.S. Dist. LEXIS 17844 (E.D. La. 1992); Wallman v. Tower Air, Inc., 189 F.R.D.
2 566, 569 (N.D. Cal. 1999). (See, also, United States v. Cook, 795 F.2d 987 (Fed. Cir. 1986) (suit
3 against United States seeking liquidated damages for failure to pay overtime wages; pre-
4 authorization discovery order granted compelling defendant to disclose names and address of other
5 federal firefighters and law enforcement personnel); Bailey v. Ameriquest Mortg. Co., *supra* (pre-
6 authorization discovery of names and addresses of potential plaintiffs in FLSA overtime pay case
7 allowed); Miklos v. Golman-Hayden Cos., Inc., 2000 U.S. Dist. LEXIS 22352 (S.D. Ohio 2000)
8 (plaintiff's pre-authorization motion to compel production of names and addresses of potential
9 party employees of defendant in FLSA wage proceeding granted); Tucker v. Labor Leasing, Inc.,
10 155 F.R.D. 687 (M.D. Fla. 1994) (plaintiff's pre-authorization motion to compel seeking names of
11 all employees of defendant who were due overtime compensation granted)). The clear weight of
12 authority on pre-certification production of putative class members' contact information is in favor
13 of Plaintiff.

14 **C. Privacy Objections Do Not Bar Plaintiff's Discovery**

15 A federal court exercising diversity jurisdiction must apply the substantive law of the state
16 in which the court sits. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938). Accordingly, this
17 Court must look to California law to determine the merit of ADECCO's refusal to provide the
18 contact information of putative class members based on the right to privacy. California courts
19 confirm that there is no basis for this assertion.

20 The California Supreme Court in Pioneer Electronics (USA) Inc. v. Superior Court, 40 Cal.
21 4th 360 (2007), affirmed that no violation of the right to privacy occurs when a defendant releases
22 putative class members' contact information. In Pioneer, the Supreme Court observed: "Contact
23 information regarding the identity of potential class members is generally discoverable, so that the
24 lead plaintiff may learn the names of other persons who might assist in prosecution of the case.
25 Such disclosure involves no revelation of personal or business secrets, intimate activities, or
26 similar private information, and threatens no undue intrusion into one's personal life..." *Id.* at
27 373. Here, Plaintiff requires the same discovery to obtain evidence from a sampling of putative
28

1 class members to support a motion for class certification. Given the instruction of the Pioneer
 2 court, ADECCO has no basis for its refusal to produce the information requested.

3 In Puerto v. Superior Court, 158 Cal. App. 4th 1242 (2008), the most recent California case
 4 addressing the question of discovery of putative class member identity and contact information, the
 5 Court held putative class member contact information is fully discoverable, unimpeded by notice
 6 or ‘opt-out’ procedures. The court stated that the identification of potential witnesses is within the
 7 scope of proper discovery under Cal. Code of Civ. Proc. §2017.010.²⁴ Id. at 1249. The court
 8 explained that although the potential witnesses, who also worked for the employer, possess a
 9 legitimate expectation that the employer will not disclose their addresses and telephone numbers, it
 10 is also reasonable to conclude that they might want to share this information with coworkers who
 11 sought relief for violations of employment laws. Id. at 1252-53. Hence, according to Puerto, the
 12 requested information, while personal, was not particularly sensitive, there were no unusual
 13 circumstances suggesting that the information should be restricted and the disclosure of the
 14 requested addresses and telephone numbers would not significantly intrude on the potential
 15 witnesses’ right to privacy under Cal. Const., art. I, § 1. Id. at 1254-55. As a result, the Court
 16 held that disclosure by Defendant of putative class member contact information did not require
 17 prior notice to class members or an opt-out procedure to protect privacy rights. Id. at 1259.

18 **D. Production of Class Members’ Contact Information Is Not Burdensome**

19 As its last objection, ADECCO claims that production of the information sought is overly
 20 burdensome. ADECCO did not elaborate as to what burden disclosure of the information might
 21 cause. Plaintiff defined the class she sought to represent by entries on ADECCO’s meal period
 22 records, thereby tying the disclosure of putative class members’ information to such records. After
 23 Plaintiff’s counsel deposed Ms. Hans on ADECCO’s time record keeping practices, Plaintiff

24 Cal. Code Civ. Proc. § 2017.010 provides in part: “any party may obtain discovery regarding any matter, not
 25 privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion
 26 made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the
 27 discovery of admissible evidence.” While Fed. R. Civ. P. 26(b)(1) governs the scope of discovery in federal court, it is
 28 similarly broad in language: “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
 party’s claim or defense — including the existence, description, nature, custody, condition, and location of any
 documents or other tangible things and the identity and location of persons who know of any discoverable matter.”
 For the purpose of analyzing whether the disclosure of putative class members’ contact information is within the
 scope of discovery, the Court should consider both statutes one and the same.

1 learned that ADECCO stores a large portion of its time records electronically. Plaintiff further
2 learned that ADECCO's electronic record keeping systems, the time.adecco.com website and the
3 ATS telephone system, do not actually capture any data regarding meal period breaks, only the
4 total number of hours worked on a given day. Consequently, ADECCO does not have to
5 undertake an arduous search to discover which of its electronically-stored time records belong to
6 putative class members, as virtually all of its electronic time records input via either the website or
7 the telephone system from the class period do not depict a meal period break.

All ADECCO must do to respond to Plaintiff's interrogatories is to search its systems for the electronic time records from the class period and compile a list of people whose records match the information requested in Special Interrogatory No. 1: the putative class. From there, ADECCO can produce contact information for each putative class member, as well as the other requested information: the period of employment for each putative class member (No. 2) and the number of people in the putative class (No. 3). The information requested in No. 4 regarding identification of the persons who complained to ADECCO regarding the absence of meal period breaks likely overlaps with the persons identified as putative class members. ADECCO also can easily locate the information requested in No. 5 regarding the total number of persons employed by ADECCO during the class period by searching its own electronic systems. Clearly, ADECCO's claim that the disclosure of this information is burdensome is also without merit.

III. CONCLUSION

20 Accordingly, for the reasons stated, Plaintiff requests that the Court grant the motion and
21 order ADECCO to produce the requested information.

23 | Dated: July 3, 2008

QUALLS & WORKMAN, L.L.P.

24
25 By: /S/
26 Daniel H. Qualls
Attorneys for Plaintiff and all others similarly
situated